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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
(Portland Division)

ADI ACQUISITION CO., LLC,
Plaintiff,

v.

THEODORE L. VALLAS,
Defendant.

Civil No. 3:18-cv-01871-HZ
PRETRIAL ORDER

The following pretrial order is lodged pursuant to Local Rule 16-5.

1. NATURE OF THE ACTION

In this action, plaintiff ADI Acquisition Co., LLC (“ADI Acquisition”) seeks to enforce defendant Theodore L. Vallas’ (“Vallas”) personal guaranty. ADI Acquisition alleges one cause of action for breach of guaranty.

This will be a bench trial and the parties consent to trial by a magistrate judge.

2. SUBJECT MATTER JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because ADI Acquisition is a citizen of Oregon and Vallas is a Citizen of California and the amount in controversy is in excess of \$75,000. The Court also has jurisdiction over this matter because the parties have so agreed.

3. AGREED FACTS

Pursuant to a Promissory Note dated March 20, 2018 (the "Note"), Carlsbad-Palomar Airlines, Inc. ("CPA") agreed to pay to ADI Acquisition the sum of \$2,032,398.48, due and payable on or before April 15, 2018. To the extent the Note was not timely repaid, it began to bear interest at the rate of 12% per annum from the date due until paid, with interest compounding monthly. A true and correct copy of the Note was attached as Exhibit 1 to ADI Acquisition's Complaint [Dkt. 1].

Vallas executed a Personal Guaranty dated March 20, 2018 (the "Guaranty"), in favor of ADI Acquisition, in which he fully, unconditionally, and irrevocably guaranteed full payment and performance of any and all indebtedness and obligations of CPA to ADI Acquisition under or in connection with the Note. A true and correct copy of the Guaranty was attached as Exhibit 2 to ADI Acquisition's Complaint [Dkt. 1].

Under the Guaranty, Vallas promised to pay the principal amount of the Note, any interest due thereon, and all attorney fees and costs incurred in enforcing the Guaranty.

Under the Guaranty, Vallas' obligation to ADI Acquisition is primary and unconditional and ADI Acquisition has no obligation to proceed first against CPA.

Although it was not required to do so under the terms of the Note and Guaranty, on or about May 14, 2018, ADI Acquisition sent a letter to CPA and Vallas demanding repayment of the Note. Neither CPA nor Vallas repaid the Note.

On or about June 1, 2018, CPA made an interest payment to ADI Acquisition in the amount of \$20,323.98. On or about June 15, 2018, CPA made an interest payment to ADI Acquisition in the amount of \$20,323.98. On or about July 23, 2018, CPA made an interest

payment to ADI Acquisition in the amount of \$20,323.98. To date, CPA has made interest payments totaling \$60,971.94.

As of April 16, 2018, CPA and Vallas owed ADI Acquisition the principal amount of \$2,032,398.48, plus interest of \$668.19 per day until paid in full, less \$60,971.94 in interest payments made to date.

4. CLAIMS AND DEFENSES

CLAIM

As set out above, ADI Acquisition alleges one claim for breach of guaranty against Vallas. In addition to the agreed facts set out above, ADI Acquisition contends:

(a) ADI Acquisition has performed all conditions, covenants, and obligations required of it under the Guaranty except for those which have been excused, waived, or which Vallas is estopped from asserting.

(b) Under the terms of the Guaranty, ADI Acquisition is entitled to recover the entire amount due under the Note from Vallas with no obligation to attempt to collect from CPA, and Vallas is responsible for all legal fees and other costs and expenses incurred in connection with collecting amounts due or enforcing the terms of the Guaranty.

DEFENSES

Vallas asserts ten affirmative defenses to ADI Acquisition's breach of guaranty claim, as follows:

- (1) Anticipatory repudiation
- (2) Breach of contract
- (3) Unjust enrichment
- (4) Failure of Consideration
- (5) Invalid Contract due to Unconscionability
- (6) Duress
- (7) Invalid Contract due to Fraud, Deceit, or Misrepresentation

- (8) Invalid Contract due to Unclean Hands/In Pari Delicto
- (9) Breach of duty of good faith and fair dealing
- (10) Failure to state a claim

5. OTHER LEGAL ISSUES

At this time, the parties are not aware of additional legal issues.

6. AMENDMENTS TO PLEADINGS

No amendments are contemplated at this time.

DATED: July 19, 2019.

Submitted by:

TONKON TORP LLP

By /s/ Ava L. Schoen

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Defendant

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The foregoing Pretrial Order is:

- ☐ **Approved as lodged.**
- ☐ **Approved as amended by interlineation and the pleadings are amended accordingly.**

SO ORDERED this _____ day of _____, 2019.

MARCO A. HERNANDEZ
United States District Court Judge